Office - Supreme Court, U.S.
FILED
MAY 18 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-1753.

In the
Supreme Court of the United States.

OCTOBER TERM, 1980.

TEXTRON, INC.,
PETITIONER,

v.

VALENTINE R. CICCONE,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

Brief in Opposition to Petition for Writ of Certiorari.

ROBERT D. PARRILLO,
HANSON, CURRAN & PARKS,
1210 Turks Head Building,
Providence, Rhode Island 02903.
(401) 421-2154
Counsel for Respondent

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

Question Presented.

Did the Court of Appeals for the First Circuit err in holding that a deferral state age discrimination claimant has 300 days within which to file age discrimination charges with the Department of Labor?

Table of Contents.

Summary of argument	1
Argument	2
The opinion of the Court of Appeals for the First Circuit is not in conflict with any decisions of this Court	2-3
Conclusion	3

Table of Authorities Cited.

Cases.

Bean v. Crocker National Bank, 600 F.2d 754 (9th Cir. 1979)	2
Davis v. Calgon Corp., 22 BNA FEP Cases 1761 (3d Cir. 1980), rev'd on reh., 627 F.2d 674 (3d Cir. 1980), cert. denied, 101 S.Ct. 897 (1981), reh. denied, 49 U.S.L.W. 3644 (March 2, 1981)	2, 3n
Ewald v. Great Atlantic & Pacific Tea Co., Inc., 620 F.2d 1183 (6th Cir.), vacated, 101 S.Ct. 311 (1980), rev'd, No. 77-1600 (6th Cir. January 6, 1981), reh. denied, No. 77-1600 (6th Cir. February 5, 1981) (petition for cert. filed March 16, 1981, No. 80-1566)	2
Goodman v. Heublein, Inc., 49 U.S.L.W. 4256 (2d Cir. March 25, 1981)	2
Mohasco Corp. v. Silver, 447 U.S. 807 (1980)	1, 2, 3

29 U.S.C.
§ 626(d)(2) — Age Discrimination in Employment Act (ADEA) 2, 3
§ 633(b) — Age Discrimination in Employment Act (ADEA) 2, 3
42 U.S.C. §§ 2000e-5(c) and (e) — Title VII of the Civil Rights Act of 1964 2, 3
Age Discrimination in Employment Act (ADEA), codified at 29 U.S.C. §§ 626(d)(2), 633(b) 2, 3
Civil Rights Act of 1964, Title VII, codified at 42 U.S.C. §§ 2000e-5(c) and (e) 2, 3

No. 80-1753.

In the
Supreme Court of the United States.

OCTOBER TERM, 1980.

TEXTRON, INC.,
PETITIONER,

v.

VALENTINE R. CICCONE,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

Brief in Opposition to Petition for Writ of Certiorari.

Summary of Argument.

Mohasco Corp. v. *Silver*, 447 U.S. 807 (1980), is authority for the First Circuit Court's holding that an age discrimination claimant in a deferral state has 300 days to file his age discrimination charges with the appropriate federal agency; the statute, 29 U.S.C. § 626 (d)(2), in unambiguous terms provides as much. Furthermore, the holding of the First Circuit Court is consistent with that of every other Circuit Court of Appeals dealing with the issue in question.

Argument.

Petitioner's request for the issuance of a writ of certiorari should be denied since the opinion of the Court of Appeals for the First Circuit is not at variance with holdings of the other circuit courts nor is it contrary to any opinion of this Court. The Second, Third, Sixth and Ninth Circuit Courts, like the First Circuit Court, all have held that the time limit for federal filing of a deferral state age discrimination claim is 300 days. *Goodman* v. *Heublein, Inc.*, 49 U.S.L.W. 4256 (2d Cir. March 25, 1981); *Davis* v. *Calgon Corp.*, 22 BNA FEP Cases 1761 (3d Cir. 1980), *rev'd on reh.*, 627 F.2d 674 (3d Cir. 1980), *cert. denied*, 101 S.Ct. 897 (1981), *reh. denied*, 49 U.S.L.W. 3644 (March 2, 1981); *Ewald* v. *Great Atlantic & Pacific Tea Co., Inc.*, 620 F.2d 1183 (6th Cir.), *vacated*, 101 S.Ct. 311 (1980), *rev'd*, No. 77-1600 (6th Cir. January 6, 1981), *reh. denied*, No. 77-1600 (6th Cir. February 5, 1981) (petition for cert. filed March 16, 1981, No. 80-1566); *Bean* v. *Crocker National Bank*, 600 F.2d 754 (9th Cir. 1979). There is no contrary opinion by a circuit court.

Petitioner does not argue that the First Circuit Court's decision conflicts with any decision of this Court. Petitioner simply argues that there is more than one way to read *Mohasco Corp.* v. *Silver, supra*, and petitioner disagrees with the interpretation given to it by the First Circuit Court. *Mohasco Corp.* v. *Silver, supra*, dealing with provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-5(c) and (e), which are almost identical to those of the Age Discrimination in Employment Act, 29 U.S.C. §§ 626(d)(2) and 633(b) (hereinafter ADEA), held that a deferral state claimant has 300 days to file charges regardless of a claimant's failure to seek administrative remedies within 180 days. *Mohasco Corp.* v. *Silver, supra*, also indicates that statutory provisions regarding filing time requirements should be given their plain mean-

ing, especially where (as in Title VII and ADEA cases) laymen institute the changes. 447 U.S. at 816 n.19.

The language of the ADEA providing 300 days for charge filing is clear and unambiguous. The decision of the First Circuit Court in no way conflicts with *Mohasco Corp.* v. *Silver*, *supra*, or any other decision of this Court.

Conclusion.

The Circuit Court's decision is correct and not in conflict with any other decisions. Respondent respectfully urges that this Court deny the petition for certiorari.[1]

Respectfully submitted,

ROBERT D. PARRILLO,
HANSON, CURRAN & PARKS,
1210 Turks Head Building,
Providence, Rhode Island 02903.
(401) 421-2154
Counsel for Respondent

---

[1] Although respondent appreciates that denials of petitions for certiorari are not to be considered as precedents, it should be noted that the employer's petitions for certiorari and rehearing on the identical issue presented here were recently denied in *Davis* v. *Calgon Corp.*, *supra*.